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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC640

Taking and Importing Marine Mammals; U.S. Navy Training in the Gulf of Alaska Temporary Maritime Activities Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of a Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notice is hereby given that NMFS has issued a 3-year Letter of Authorization (LOA) to the U.S. Navy (Navy) to take marine mammals incidental to Navy training and research activities to be conducted within the Gulf of Alaska Temporary Maritime Activities Area (GOA TMAA). These activities are considered military readiness activities pursuant to the Marine Mammal Protection Act (MMPA), as amended by the National Defense Authorization Act of 2004 (NDAA).

DATES: This Authorization is effective from May 16, 2013, through May 4, 2016.

ADDRESSES: An electronic copy of the LOA and supporting documentation may be obtained by writing to P. Michael Payne, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Brian D. Hopper, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

## Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 et seq.) directs NMFS to allow, upon request, the incidental taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing), if certain findings are made by NMFS and regulations are issued. Under the MMPA, the term "take" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill marine mammals.

Regulations governing the taking of marine mammals by the Navy incidental to training and research activities in the GOA TMAA became effective on May 4, 2011 (76 FR 25505), and remain in effect through May 4, 2016. For detailed information on this action, please refer to that document. These regulations include mitigation, monitoring, and reporting requirements and establish a framework to authorize incidental take through the issuance of LOAs. On February 1, 2012, NMFS amended the regulations for 12 Navy Range Complexes, including GOA TMAA, to allow for multi-year LOAs (77 FR 4917).

## Summary of Request

On December 15, 2012, NMFS received a request from the Navy for an LOA for the taking of marine mammals incidental to training activities conducted within the GOA TMAA under regulations issued on May 4, 2011 (76 FR 25505). The Navy has complied with the measures required in 50 CFR 218.124 and 218.125, as well as the LOA issued on May 17, 2011, and submitted the reports and other documentation required in the final rule and the 2011 LOA.

## Summary of Activity Under the 2011 LOA

As described in the Navy's exercise reports (both classified and unclassified), from May 2011 to October 2012, the training activities conducted by the Navy were within the scope and

amounts indicated in the 2011 LOA and the levels of take remain within the scope and amounts contemplated by the final rule.

#### Planned Activities and Estimated Take for 2013 through 2016

Between 2013 and 2016, the Navy expects to conduct the same type and amount of training identified in the 2011 LOA; however, the Navy does not plan to conduct any Sinking Exercises (SINKEXs). While the Navy requested the same amount of take that was authorized in the 2011 LOA, NMFS has slightly adjusted those numbers to account for the exposure analysis contained in the Biological Opinion. However, the authorized take remains within the annual estimates analyzed in the final rule.

#### Summary of Monitoring, Reporting, and Other Requirements Under the 2011 LOA

##### Annual Exercise Reports

The Navy submitted their classified and unclassified exercise reports within the required timeframes and the unclassified report is posted on NMFS website:

<http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. NMFS has reviewed both reports and they contain the information required by the 2011 LOA. The reports indicate the amounts of different types of training that occurred from May 2011, to October 2012. The Navy conducted zero SINKEXs and all other exercise types conducted (classified data) fell within the amount indicated in the LOA.

##### 2011-2012 Monitoring

The Navy conducted the monitoring required by the 2011 LOA and described in the Monitoring Plan, which included passive acoustic monitoring utilizing high-frequency acoustic recording packages (HARPs). The Navy submitted their Monitoring Reports, which are posted on NMFS' website (<http://www.nmfs.noaa.gov/pr/permits/incidental.htm>), within the required

timeframe. Because data is gathered through May 1 and the report is due in July, some of the data analysis will occur in the subsequent year's report. Navy-funded marine mammal monitoring accomplishments within GOA TMAA for the past year consisted of the following:

#### Passive Acoustic Monitoring

Two high-frequency acoustic monitoring packages (HARP) have been deployed by Scripps Institute of Oceanography (SIO) within the GOA TMAA. Both HARPs were bottom-deployed in July 2011. One is located on the shelf (203 m) and the other is located on the slope (900 m) of the north central Gulf of Alaska. Both HARPs were field serviced in early May 2012. In addition to these two HARPs, in September 2012, a third HARP was deployed to obtain passive acoustic data along the side of the Pratt Seamount (930 m). Over 5,756 hours of passive acoustic data have been recorded. Subsequent analysis confirmed detection of the following marine mammals: blue whale, fin whale, gray whale, humpback whale, six toothed whale species, and sounds dominated by shipping noise.

#### Vessel-based Survey

In the summer of 2013, a Navy-funded visual line transect survey will be conducted in the offshore waters of the Gulf of Alaska (GOALS 2013). The primary objectives for GOALS 2013 are to acquire baseline data to increase understanding of the likely occurrence (i.e., presence, abundance, distribution and/or density of species) of beaked whales and other ESA-listed marine mammals in the Gulf of Alaska.

#### Other Monitoring Activities

#### Pacific Northwest Cetacean Tagging

An ongoing Navy-funded effort in the Pacific Northwest will attach long-term satellite tracking tags to migrating gray whales off the coasts of Oregon and northern California. This

study is being conducted by the University of Oregon and may also include tagging of resident gray whales or other large whales species such as humpback and fin whales, if encountered. Although this effort is not directly affiliated with the GOA TMAA monitoring program, depending on when these tags are attached, gray whale movement patterns along the Pacific Coast and through the Gulf of Alaska may be tracked. Results from this effort will be summarized and referenced in next year's 2013 GOA TMAA annual Monitoring Report if animals are found to be passing through or adjacent to the GOA TMAA.

In conclusion, the Navy successfully implemented the monitoring requirements for the GOA TMAA by the end of the second monitoring period. Over the next three years, the Navy will continue to maintain the HARPes that are currently in the water, while analyzing and presenting results from previously recorded data. Furthermore, the Navy will continue to report tagging results from the Pacific Northwest Cetacean Tagging study.

#### New Studies

Recent Navy applications, Draft Environmental Impact Statements, and proposed MMPA regulations for testing and training activities contain proposed acoustic criteria and thresholds that would, if adopted, represent changes from the criteria and thresholds currently employed by NMFS in incidental take authorizations and associated biological opinions for Navy military readiness activities. The revised thresholds are based on evaluations of recent scientific studies (see Finneran et al. (2010), Finneran and Schlundt (2010), and Tyack et al. (2011)).

The proposed new criteria and thresholds based on the Finneran and Tyack studies have recently been made available for public comment, (AFTT: 78 FR 7050, January 31, 2013; and HSTT: 78 FR 6978, January 31, 2013), and the public comments are still being evaluated. Until

that process is complete, it is not appropriate to apply the new criteria and thresholds in any take authorization or associated biological opinion.

#### Adaptive Management

The Navy's adaptive management of the GOA TMAA monitoring program involves close coordination with NMFS to align marine mammal monitoring with the overall objectives of the monitoring plan. Monitoring under the 2011 LOA only represents the two years of a planned five-year effort. At this point, it would be premature to draw detailed conclusions or initiate comprehensive monitoring changes because the analysis of monitoring and other data is not complete. In addition, at the annual adaptive management meeting, NMFS and the Navy took into consideration, among other things, the study by Tyack et al. (2011) evaluating the documented responses of marine mammals to sonar to determine if it warranted additional mitigation or monitoring for beaked whales. During their October 2011 meeting, NMFS and the Navy determined that the study by Tyack et al. (2011) did not provide a basis for prescribing any additional mitigation or monitoring for beaked whales. The study itself makes no recommendations regarding potential additional mitigation or monitoring, and NMFS, the Navy, and the Marine Mammal Commission did not think that the new information included in the study lent itself to the incorporation of new mitigation measures.

#### Authorization

The Navy complied with the requirements of the 2011 LOA. Based on our review of the record, NMFS has determined that the marine mammal take resulting from the 2011 military readiness training and research activities falls within the levels previously anticipated, analyzed, and authorized. Further, the level of taking authorized from 2013 to 2016 for the Navy's GOA TMAA activities is consistent with our previous findings made for the total taking allowed under

the GOA TMAA regulations. Finally, the record supports NMFS' conclusion that the total number of marine mammals taken by the 2013 to 2016 activities in the GOA TMAA will have no more than a negligible impact on the affected species or stocks of marine mammals and will not have an unmitigable adverse impact on the availability of these species or stocks for taking for subsistence uses. Accordingly, NMFS has issued an LOA for Navy training and research activities conducted in the GOA TMAA from May 16, 2013, through May 4, 2016.

Dated: May 20, 2013.

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Helen M. Golde,  
Acting Director, Office of Protected Resources,  
National Marine Fisheries Service.

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